Court No.2

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 357 of 2002

United India Insurance Company Ltd.,
through its Divisional Manager, Divisional
Office, Tikonia, Haldwani District-Nainital.

.....Opp.party No.3/Appellant

Versus

(1)Ranbir Singh S/o Sri Chandan Singh,
R/o Villaghe Kurnrada, Patti Gamari,
Tehsil Dunda, District Uttarkashi,
..... Claimant/Respondent

(2)Sri Shanti Prasad Garola S/o Sri Buria Ram
R/o Village Bon, Patt-Barsali,
Tehsil-Dunda, District-Uttarkashi,
(3)Sri Ravindra Kumar Kukreti
S/o Sri Ghananand Kukreti,
R/o Village Chinyali, Patti-Bisht,
Tehsil Dunda, District-Uttarkashi.

.....Opp.party/Respondents.

.....

Sri Prabhat Pandey, learned counsel for the appellant.
Sri Tanuj Semwal & Sri Nandan Singh, 1d. Counsel for respondents 2 & 3
None appears for claimant.

Date: 27th Aug.,2004.

Hon'ble P.C. Verma,J.
Hon'ble B.S. Verma,J.

This appeal has been preferred by the Opp.party/appellant against the judgment and order dated 03.09.2002 passed by the Motor Accident Claims Tribunal/District Judge, Uttarkashi in Motor Accident Claim Case No. 39 of 2001, whereby the appellant-United India Insurance Company has been directed to pay Rs. 2,10,000/- as compensation to the injured claimant alongwith interest at the rate of 9% per annum.

2- Brief facts giving rise to this appeal are that on 18.7.2001 at about 11.00 a.m. Ranbir Singh was going on foot at his left side on the road in main market Chham. At the same time the bus No. UGA 9871 which was going from Tehri to Purola and being driven by Opp.party No.1- Shanti Prasad Gairola rashly and negligently dashed against Ranbir Singh and its front wheel crushed the right leg of Ranbir Singh. He was taken to local Primary Health Centre fromwhere he was referred for better treatment. Then he was shifted to Combined Medical Institute, Dehradun. He remained there under treatment from 18.7.2001 to 26.8.2001. His right leg was amputated under the knee. It was alleged that on his treatment he has spent Rs. 58,906/- besides travelling expenses. Ranbir Singh was was aged 17 years and he was studying in Class-X at the time of accident. Due to this accident he has not completed his study and his career has been spoiled due to this disability.

3- Opp.party Nos. 1 & 2 are the driver and owner of the bus No.UGA-9871 respectively. They filed their joint written statement admitting the accident but denied that the accident occurred due to rash and negligent driving of the driver of the bus in question. The Opp.party No.3 United India Insurance Company also filed its written statement denying all the allegations of the claim petition. The bus was plying in violation of the conditions of the insurance policy. On the pleadings of the parties, the Tribunal framed necessary issues and after recording evidence allowed the claim petition accordingly. Feeling aggrieved, the Insurance Company has come up in this appeal.

4- The learned counsel for the appellant has submitted before us that the appellant has a right to contest the case on merit under Section 170 of the Motor Vehicles Act and, therefore, argued that the Tribunal has not properly appreciated the evidence on record to determine the quantum of compensation. We have gone through the entire material on record. The record does not show that application under Section 170 of the aforesaid Act has been filed before the Tribunal for permission to contest the case on all the grounds. In this case, the owner of the offending bus has contested the case before the Tribunal. The Tribunal has also not given any finding that there has been collusion between the owner and the claimant. Therefore, the appellant-Insurance Company cannot be allowed to challenge the quantum of compensation by filing the present appeal. The appeal can be filed by the Insurance Company on limited grounds under the provisions of the Act. We are fortified in our view by the Apex Court judgment in the case of ***National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others, reported in (2002) 7, Supreme Court Cases, Page 456.*** In that case, it has been observed by the Apex Court that, ***"even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle."*** Thus in view of the above law laid down by the Apex Court, none of the contentions raised by the learned counsel for the appellant is tenable and has to be ignored outright.

5- In view of the aforesaid discussions, the appeal has no merit and is hereby dismissed. The impugned judgment and award is upheld. No order as to costs. Amount, if deposited in the appeal, shall be remitted to the Tribunal concerned within a period of three months.

(B.S.Verma, J.) **(P.C.Verma, J.)**

P.Singh